

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

EDGAR LIPTON BRITT

Plaintiff,

V.

CIVIL ACTION NO. 7:21-CV-00009

**DR. CARLOS MEDINA, M.D.
AND NUESTRA CLINICA
DEL VALLE, INC.¹**

Defendants.

NOTICE OF REMOVAL OF CIVIL ACTION

Comes now, the United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas, and Lance Duke, Assistant United States Attorney, pursuant to Title 28 United States Code §1346(b), Title 28 § 2679(d)(2) and Title 28 United States Code §§1441(a), *et seq.*, and hereby files this Notice of Removal of the entire above-entitled cause now pending as Cause No. C-3510-20-L, in the District Court of the 464TH Judicial District Hidalgo County, Texas from the state court in which it was originally filed to the United States District Court for the Southern District of Texas, McAllen Division. This Removal is proper under Title 28 United States Code § 1346(b), and Title 28 United States Code §§ 1441(a), *et seq.*

I. Introduction

This is a medical malpractice suit which falls under the Federal Tort Claims Act and is brought against Dr. Carlos Medina and Nuestra Clinica Del Valle, Inc. alleging injuries sustained as a result of a referral from Dr. Medina to an outside neurosurgeon and from having been

1 Defendant has changed the names of defendants in the pleadings to respectfully reflect their proper title and correct name.

dropped as patient at Nuestra Clinica Del Valle, Inc.²

II. Basis for Removal

Removal is proper because plaintiff's suit involves an entity which the Attorney General through his designee, the United States Attorney for the Southern District of Texas, has certified a Public Health Service (PHS) facility and its employee, Dr. Carlos Medina, MD. *See Exhibit 1, Certification of Scope of Clinic, and Exhibit 2, Certification of Scope of Employment.* Pursuant to 42 U.S.C. § 233(c),

"[u]pon certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such proceeding commenced in a State court shall be removed without bond any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it I pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto."

"[Section] 233(a) states that the FTCA is the exclusive remedy against the United States for medical malpractice committed by a Public Health Service (PHS) employee acting within the scope of his duties, while § 233(g) provides that an action against the United States is the plaintiff's exclusive remedy for alleged malpractice by a PHS employee." *Warren v. Joyner*, 996 F.Supp. 581, 582 (5th Cir. 1997).

III. State Court Proceedings

A true and correct copy of all pleadings, process, orders and other filings in the state-court are attached to this notice as required by 28 U.S.C. §1446(a). *See Exhibit 3.*

IV. Venue

Venue is proper in this district under 42 U.S.C. §233 (c) because the state court where the

² Plaintiff is a pro se filer whose handwritten complaint is somewhat difficult to understand. Defense counsel has taken his best guess as to the allegations of injury.

suit has been pending is located in this district.

V. Notice to State Court

Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

VI. CONCLUSION

For the foregoing reasons, the United States of America seeks to remove the above-captioned action to the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. §§ 2679(d)(2) and 1441(a). Because Plaintiff's claims in the state action involve a common law tort claim against the United States Postal Service and its employee, the claim is, therefore, within the exclusive jurisdiction of the United States District Court and the instant action is properly removed to the United States District Court for the Southern District of Texas.

Respectfully Submitted,

RYAN K PATRICK
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CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing "Notice of Removal" with all attachments thereto, will be served on the Honorable Judge Ysmael D. Fonseca, Cause No. C-3510-20-L, in the District Court of the 464TH Judicial District Hidalgo County, 100 N. Closner, Edinburg, TX 78539 and that a true copy thereof was also served upon the following by 1st class United States mail upon receipt of the copy with the clerk's docket entry number.

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